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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/072,543 | 02/08/2002 | Kevin B. Morton | NEOMTRX.4C1DV2 | 4228 |
| 20995 7590 08/10/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614 | | | EXAMINER FOREMAN, JONATHAN M | |
| | | | ART UNIT 3736 | PAPER NUMBER |
| | | | NOTIFICATION DATE 08/10/2007 | DELIVERY MODE ELECTRONIC |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/072,543

Applicant(s)

MORTON ET. AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Applicant is advised that should claims 2 - 11 be found allowable, claims 14 - 23 and 6 - 35 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 - 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,500,200 to Kushnir in view of US Patent No. 5,733,319 to Neilson et al.

In regards to claims 1 - 36, Kushnir discloses a closed loop heating system including a plurality of inflatable bladders (Figure 1) in a series flow path; a reservoir (90); and a fluid flow path comprising an inflow line (60) and an outflow line (62) for placing the bladders in fluid communication with the reservoir. Kushnir discloses at least 6 inflatable bladders (Figure 1) and a mechanical link (Col. 4, lines 30 - 33) between the bladders. The Examiner considers the bladders generally pear-shaped in that each comprise a wide portion and a thinner portion. A heat exchange fluid is contained within the closed loop (Col. 5, line 58). Kushnir discloses each bladder having a width of no more than about 2 inches, a length of no more than about 3 inches, and a thickness of

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no more than about 1 inch (Col. 2, lines 37 – 44). Kushnir fails to disclose the reservoir being a compressible container and the closed loop system being free of a pump, wherein the closed loop system can be operated and removed without exposing a fluid within the closed loop system to the outside of the closed loop system. However, Neilson et al. discloses a closed loop system including a compressible reservoir (110; Col. 8, line 40) and being free of a pump, wherein the closed loop system can be operated and removed without exposing a fluid within the closed loop system to the outside of the closed loop system (Col. 6, lines 15 – 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reservoir and closed loop system as disclosed by Kushnir to include a compressible container and to be free of a pump, wherein the closed loop system can be operated and removed without exposing a fluid within the closed loop system to the outside of the closed loop system as taught by Neilson et al. in order to allow the closed loop system to be disposable to thereby eliminate otherwise necessary cleaning and sterilization of non-disposable, fixed heat transfer units (Col. 6, lines 15 – 20).

Response to Arguments

4. Applicant's arguments filed 11/16/06 have been fully considered but they are not persuasive. Applicant asserts that the lobes disclosed by Kushnir in view Neilson et al. are not generally pear-shaped. However, the term generally leads to a broad interpretation of pear-shaped. As such, the Examiner considers the lobes disclosed by Kushnir in view Neilson et al. to be generally pear-shaped in that each lobe comprise a wide portion and a thinner portion. It is noted that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus that differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); *In re Yanush*, 477 F.2d 958, 177 USPQ705 (CCPA 1973); *In re Finsterwalder*, 436

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F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); *Ex parte Masham*, 2 USPQ2d 1647 (BbPatApp & Inter 1987).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JMLF


ROBERT H. HENDENBURG
SENIOR PATENT EXAMINER
TECHNOLOGY CENTER 3700